IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

SPL. APPL. WRIT No. 128 of 2007

PAWAN KUMAR & ORS.
V/S
HARISH KUMAR & ORS.

Mr. NM LODHA, for the appellant

Mr.Mahaveer Bhisnoi for Mr. RAKESH ARORA, for the respondent

Date of Order : 23.10.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

Heard learned counsel for the appellant.

Perused the impugned order.

Impugned order is the order passed with the agreement of the parties. While issuing the notice this court noticed that in the trial court the out-standing arrears of rent were determined vide order dated 04.04.2005 which order had been challenged in S.B.C.M.A.No.877/2005 which was dismissed on 17.04.2006, then it was noticed, that the contention is, that in view of the above, the defendant cannot be permitted to take the plea of non-existence of relationship of landlord and tenant, and the amendment cannot be allowed.

It would suffice to say, that the order passed on 04.04.2005, and affirmed by this Court on 17.04.2006, is only an interlocutory order, while suit is to be decided on

its own merits. So far as the merits of the plea sought to be amended is concerned, the plaintiff may have any amount of material to satisfy the trial court that the plea taken has no substance, but then, by the amendment orders these are not sought to be nullified or recalled in the trial. In that view of the matter when the order impugned has been passed with the agreement of the parties, we do not find any ground to interfere, in our appellate jurisdiction. The appeal is, therefore, dismissed. However, the trial court is directed to proceed with the trial expeditiously.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

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